Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NILS R.C. RYDBECK and JOHN FUSSELL

Appeal No. 2002-1249
Application No. 09/025,395

ON BRIEF

Before THOMAS, FLEMING, and RUGGIERO, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 11-19. Claims 1-10 and 20-23 are subject to a restriction requirement and are withdrawn from consideration.

Invention

The invention relates to a portable radio communication device having an integral entertainment module including RAM or ROM for storing audio, video and/or still images. See page 1 of Appellants' specification. Figure 1 is a perspective view of the portable communication device of Appellants' invention. Figure 2 is a block diagram of the portable communication device. Figure

3 is a block diagram of the entertainment module contained in the portable communication device. See page 4 of Appellants' specification. The cellular phone 10 includes a transceiver unit 12 containing an RF transceiver 18, color control logic 20, program memory 22, and audio processing unit 24. See page 5 of Appellants' specification. The cellular phone 10 also includes a built-in digital entertainment module 50. The entertainment module 50 includes extended RAM and/or removable memory cartridges for storing music or other audio signals that can be played back through the headset 40 of the cellular phone 10. See page 6 of Appellants' specification.

Independent claim 11 present in the application is representative of the claimed invention and is reproduced as follows:

11. A cellular telephone having an entertainment module for playing pre-recorded audio and video signals comprising:

a. a transceiver for transmitting and receiving audio and data signals;

b. a microprocessor for controlling the operation of said transceiver;

c. a signal processing circuit operatively connected to the transceiver and microprocessor for processing signals transmitted and received by the transceiver; and

d. an entertainment module with a computer memory operatively connected to the microprocessor and signal processing

circuits for storing audio and video signals for subsequent playback under the control of said microprocessor.

References

The references relied upon by the Examiner are as follows:

Benedetto et al. (Benedetto)	4,591,661	May 27, 1986
Chin	5,661,788	Aug. 26, 1997
Kitamura	5,987,106	Nov. 16, 1999 (filed Jun. 24, 1997)
Futami (Great Britain)	2 308 775	Feb. 7, 1997

Rejections at Issue

Claims 11, 12 and 14 stand rejected under 35 U.S.C. § 102 as being anticipated by Futami.

Claims 13, 15 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Futami.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Futami in view of Benedetto.

Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Futami in view of Chin and Kitamura.

OPINION

With full consideration being given the subject matter on appeal, the Examiner's rejections and the arguments of Appellants and the Examiner, for the reasons stated ***infra***, we reverse the Examiner's rejection of claims 11, 12 and 14 under 35 U.S.C.

§ 102 and we reverse the Examiner's rejection of claims 13 and 15-19 under 35 U.S.C. § 103.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. ***See In re King***, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and ***Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.***, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Appellants argue that when properly construed, independent claim 11 is not anticipated by Futami because Futami fails to teach a cellular phone with a "memory" as recited in Appellants' claims. Appellants argue that the term "memory" has been defined as a special definition in the specification to exclude electromechanical memory devices. Specifically, Appellants argue that the term "memory" is defined on page 3, lines 1-2, in the specification to mean "all forms of computer memory but [does] not include disk storage, tape storage or other memory requiring electromechanical read systems." Appellants argue that Futami discloses a cellular phone with CD-ROM drive and therefore does not anticipate Appellants' claim "memory."

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the

claim." ***In re Hiniker Co.***, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Claims will be given their broadest reasonable interpretation consistent with the specification, and limitation appearing in the specification are not to be read into the claims. ***In re Etter***, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

As our reviewing court states, "[T]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Tex. Digital Sys., Inc. v. Telegenix, Inc.***, 308 F.3d 1193, 1201-02, 64 USPQ2d 1812, 1818 (Fed. Cir. 2002). "Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." ***Tex. Digital Sys., Inc.*** 308 F.3d at 1204, 64 USPQ2d at 1819 (Fed. Cir. 2002). ("[A] common meaning, such as one expressed in a relevant dictionary, that

flies in the face of the patent disclosure is undeserving of fealty."); ***Tex. Digital Sys., Inc.*** 308 F.3d at 1204, 64 USPQ2d at 1819 (citing ***Liebscher v. Boothroyd***, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958). ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.") "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." ***Id.*** at 1204, 64 USPQ2d at 1819. "Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." ***Id.*** at 1204, 64 USPQ2d at 1819.

Upon our review, we find that Appellants have shown that the specification uses the term "memory" in a manner clearly inconsistent with the ordinary meaning. In particular, Appellants acting as their own lexicographer, has clearly set forth an explicit definition of the term "memory" different from its ordinary meaning. This meaning excludes the Futami CD-ROM drive memory. Therefore, we find that Futami does not anticipate Appellants' claims 1, 12 and 14.

For the rejection of claims 13 and 15-19 under 35 U.S.C. § 103, we find that these claims also require construing the term "memory" as per the above special definition as stated on page 3 of Appellants' specification. We further note that the Examiner relied on Futami's CD-ROM disk drive to read on Appellants' claimed "memory." Furthermore, we find that none of the references relied on by the Examiner teaches a cellular telephone having an entertainment module with a computer "memory" as defined in Appellants' specification and as recited in Appellants' claims. Therefore, we find that the Examiner has failed to establish a ***prima facie*** case of obviousness.

In view of the foregoing, we have not sustained the Examiner's rejection of claims 11, 12 and 14 under 35 U.S.C. § 102. Furthermore, we have not sustained the Examiner's rejection of claims 13 and 15-19 under 35 U.S.C. § 103.

REVERSED

JAMES D. THOMAS)
Administrative Patent Judge)
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MICHAEL R. FLEMING) BOARD OF PATENT
Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
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JOSEPH F. RUGGIERO)
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